

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ELIZABETH K. CARLEY, a.k.a.
MELISSA ARIAS

Petitioner,

vs.

JO GENTRY, et al.,

Respondents.

Case No. 2:14-cv-02097-JCM-PAL

ORDER

The court granted respondents' motion to dismiss (ECF No. 10), finding that all but one ground of the petition for a writ of habeas corpus was unexhausted. The court also denied petitioner's request to stay the action while she returned to state court, because petitioner herself caused the failure to exhaust. ECF No. 24. The court instructed petitioner to file a sworn declaration in which she either dismissed the unexhausted grounds or dismissed the action while she returned to state court. Id.

Petitioner has done neither. She has filed a motion to proceed (ECF No. 25), in which she attempts to litigate again the issues that the court already has decided. The court has warned petitioner that it would dismiss the action if she did not make the required choice, and the court will do so now. The court will dismiss the action without prejudice, but petitioner should not think that such a dismissal will excuse a later application of time bars.

Reasonable jurists would not find the court's conclusion to be debatable or wrong, and the court will not issue a certificate of appealability.

1 Petitioner also has filed two motions or notices of appeal (ECF No. 29, 30). As with an
2 earlier notice of appeal (ECF No. 19), petitioner is trying to appeal to this court from the denial of
3 the state post-conviction habeas corpus petition. This court lacks jurisdiction to consider an appeal
4 from a judgment of a state court. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462,
5 476, 483 n.16 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). Petitioner's sole
6 federal remedy from a judgment of conviction of a state court is through a petition for a writ of
7 habeas corpus pursuant to 28 U.S.C. § 2254. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

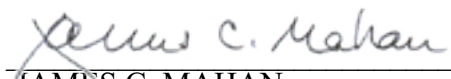
8 IT IS THEREFORE ORDERED that petitioner's motion to proceed (ECF No. 25) is
9 **DENIED**.

10 IT IS FURTHER ORDERED that the court will take no further action upon petitioner's
11 notices of appeal (ECF Nos. 29, 30).

12 IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice. The clerk
13 of the court shall enter judgment accordingly and close this action.

14 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

15 DATED: March 20, 2017.

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18 JAMES C. MAHAN
United States District Judge